

Chapter II

Role of the EPA

EPA Role in the Performance Partnership Agreement

There continues to be significant national debate concerning the appropriate roles of the federal government and states regarding implementation of federal statutes and regulations. This debate may ultimately have substantial impact on the respective roles of the state and EPA in the implementation of environmental programs to protect human health and the environment. At present, EPA Region VIII has identified ten principles, which govern EPA's role in regard to State/EPA Performance Partnerships. These principles will serve as guidelines for determining the nature and extent of federal activity in the Utah/EPA Performance Partnership for FY 2007.

1. Minimum National Environmental Standards

For many environmental programs, Congress and EPA have established minimum national standards to protect human health and the environment. These standards are applied uniformly to all states. In this partnership, EPA has the responsibility to assure that these standards are established and maintained based on health risk evaluations and other criteria established by Congress. Appropriate federal activity is warranted to monitor consistency, national trends and improvements.

2. Federal Lead Programs and Activities

In some cases, implementation of environmental programs is primarily a federal responsibility (e.g., non-delegated programs, Indian Lands) and EPA has a primary role in addressing these issues. Even so, many of these activities assume effective operation of programs delegated to the states and need state support. An example is Emergency Planning and Community Right-to-Know, which is directly implemented by EPA but relies heavily on state generated information and data. The State/EPA partnership should allow EPA to carry out its direct federal responsibilities more effectively.

3. Equity

EPA will work with the state to assure that no regulated entity obtains an economic benefit from violating laws, standards, regulations, or from illegal pollution. This assures that there is no distinct economic advantage in one state over another at the expense of public health, safety or the environment. In addition, the State/EPA partnership will provide a mechanism to work closely with the regulated community to develop effective tools for minimizing the cost of compliance.

4. Timely and Appropriate Response

The State is responsible for assuring the timeliness and appropriateness of responses to violations of state and federal law in a federally delegated program when the state has

primacy. When state responses are not timely and appropriate, EPA may assume a more active role by taking direct actions to assure compliance with the law.

5. Evaluation of Performance in Delegated Programs

In cases where EPA delegates implementation of an environmental program to the State, the State/EPA partnership must evaluate achievement of environmental program and fiscal goals and requirements. The ability to jointly evaluate these goals and requirements depends on an open relationship where both parties share information freely and work as partners to resolve issues. As such, the State and EPA will continually review program activities and fiscal performance against federal and state statutory, regulatory, and fiscal requirements and goals. During this agreement, UDEQ and EPA will consider ways to enhance joint evaluation in relation to future multi-year single definitive agreements, while also considering the requirements set forth in Parts 31 and 35 and relative to state/EPA work group efforts to improve results based partnerships.

6. Development of National and State Program Capacity

EPA is responsible for determining the federal criteria for implementing environmental laws. The state will determine the program structure consistent with federal criteria. The goals of the State/EPA partnership is to assure that the state has the capacity to implement federal environmental programs. Where needs are identified, EPA will help states build capacity with financial and technical program assistance. The State/EPA partnership will continually evaluate program needs and determine how best to enhance state program capacity.

7. Research and Development

EPA develops standards from the results of research and development, which have been undertaken or funded by the agency. Development and testing of innovative technologies, program and quality assurance methods, health and environmental risk assessments and similar initiatives are valuable components of national environmental programs and provide important information to both EPA and the State. EPA will continue to provide technical and financial support for research and applied technology evaluation.

8. Technical Assistance

Due to the variability of state needs relative to national standards, EPA may be able to provide technical assistance, which may not otherwise be available to the state. EPA will assist the state when requested in areas such as interpretations of federal regulations, technical information from other states, technical reviews of design and operation of processes, researching data, conducting risk assessments and peer review and peer matching. For EPA activities that will not require a major commitment for federal resources, EPA personnel will be available on an on-going basis. For activities that will require a major commitment of EPA resources, the partnership will define the State and EPA roles.

9. Financial Assistance

Most environmental programs included in the State/EPA partnership are partially funded by federal grants administered by EPA. Some of the major goals of state financial assistance include implementation of federal standards in state environmental programs, achievement of national environmental goals and priorities, and assistance in accomplishing state specific goals and priorities. Under the State/EPA partnership, EPA is providing states with increased flexibility in the use of federal funds in exchange for achieving agreed-upon environmental and program goals. This is particularly important in view of flat budget and under funded priorities. In all cases, State expenditure of federal grant funds and state cost shares must be consistent with the purposes and activities specified in the federal and state authorizing statutes and regulations and the commitments associated with the financial assistance.

10. Oversight

Program oversight is the process by which Region VIII carries out its responsibilities for periodically assessing, ensuring, and documenting that federally authorized programs are conducted by states and tribes adequately and in conformance with authorization agreements. Program oversight also encompasses continuing programs for which EPA funding is provided. Grant oversight focuses on deliverables, or action item commitments, and performance measures in grant work plans, and includes a fiduciary responsibility to ensure that grant funds are accounted for and used appropriately by recipients. The State Review Framework will be used by Region 8 to evaluate the FY2007 RCRA, Air, and NPDES enforcement program performance. EPA Region 8 has documented the oversight procedures it uses for most programs in the *Regional Compendium of Standard Operating Procedures for Oversight* (the Oversight Manual). The manual can be found on the Region 8 website at <http://www.epa.gov/region08/states/guidance.html>. EPA will follow those procedures during FY2007. Authorized or delegated programs that are not included in this edition will use previously established procedures during FY2007 and will complete documenting their procedures for the next edition of the manual. Program oversight must be a collaborative effort between the state programs and EPA Region VIII. As use of the oversight manual is implemented, EPA Region VIII should be receptive to recommendations from program staff that:

- reduce the reporting burden
- suggest oversight program improvements
- make necessary clarifications
- ensure consistent application of oversight from program to program.

11. State Capacity Enhancement

States are vital partners in achieving EPA's mission. A large percentage of EPA's programs are delegated to Region 8 states, making them key agents in providing clean air, water and land. To maintain and improve the effectiveness of these programs, Region 8 and the states

have agreed to add a new State Capacity Enhancement priority to the Region 8 Strategic Plan. This priority is intended to further improve the federal-state working relationship and to identify opportunities to enhance state capacity to deliver environmental program services. The elements of the priority include: ensuring adequate resources and staff; priority resource driven allocation; partnering and work-sharing; training and technical assistance; and, innovations and flexibility.

12. Special Projects/Initiatives

The President, the Administrator of EPA and the State may identify special initiatives of projects, which are a high priority. The State/EPA partnership will determine which of these initiatives will result in significant environmental benefits and develop program goals and activities and respective agency roles to implement these initiatives.